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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1945

No. 124

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON,
Petitioners,

VS.

THE UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Petitioners desire to correct certain assertions made by the respondent in its brief in opposition to the granting of certiorari in this case. Respondent erroneously states (Resp. Br. p. 4) that petitioners do not controvert that their practice of constructing dentures from self-taken impressions would be unlawful if practiced in Indiana. Quite the contrary. Petitioners have consistently maintained that the dentistry laws of Indiana (and of all the other states) do not prevent petitioners from constructing dentures from self-taken impressions; and moreover, that if said state laws should be construed to so interfere with petitioners' practices, such interpretation

would render unconstitutional such provisions of the state dentistry laws. Respondent has been fully apprised of petitioners' position, both in petitioners' briefs in the Circuit Court of Appeals (pp. 18-24, 25-36) and in their original brief in support of petition for certiorari (pp. 9-11). At all times petitioners have maintained that they have been acting within the law, both state and federal.

Petitioners also controvert respondent's assertion (Resp. Br. p. 7) that the question of interpretation of the Federal Denture Act "is not presented by this case"; the interpretation of this statute is the crux of the instant case. Certainly petitioners have a right to challenge the interpretation of a federal law when a criminal indictment founded upon said statute is brought against them, particularly when the exact meaning of said statute admittedly is not clear even to the prosecuting officials. Petitioners are before this Court to exercise that right.

It is very material whether the phrase in the prohibitory clause of the federal statute—"without the authority or prescription of" relates to the word "impressions" or to the verb "constructed." If it relates to "impressions" the law would prohibit the making of impressions by laymen—except that such prohibition contains the implied exception that a person may take an impression of his own mouth or teeth and make a denture therefrom. Nor could any law constitutionally deny to a person his right to take such impressions. The Circuit Court of Appeals in its opinion admitted that the Federal Denture Act does not prohibit self-taken impressions. Under such interpretation, petitioners have not violated the Federal Denture Act, since they worked with self-taken impressions only. The conclusion is therefore inevitable that petitioners have not violated the Federal Denture Act, if the phrase "without the authority or prescription of" relates to the word "impressions."

It is possible, as respondent contends, that the phrase in question relates back to the verb "constructed" so as to require the authorization or prescription of a dentist for the "construction" of a denture, even from a legally taken impression. The existence of such two diametrically opposed reasonable interpretations of the core of the statute renders said statute so ambiguous that no criminal indictment should be sustained under it. The authorities are clear that a criminal statute, to be valid, must be certain and definite. See *State* v. *Van Keegan,* 42 Atl. (2d) 352, 354, and other authorities cited in the brief in support of the petition for certiorari.

CONCLUSION.

Petitioners respectfully submit that this is a proper case for review by this Court. Respondent's brief reveals the ambiguities in the Federal Denture Act; the constitutionality thereof should be settled in this, the first case to challenge its substantive provisions. *We submit that the petition for certiorari should be granted.*

Respectfully submitted,

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